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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/825,073   | 04/15/2004  | Jeff Ashman          | 31950-65715         | 7152             |
| 63466  | 7590        | 11/29/2006           | EXAMINER            |                  |
| VAN COTT, BAGLEY, CORNWALL & MCCARTHY<br>P.O. BOX 45340<br>SALT LAKE CITY, UT 84145-0340 |             |                      | CABUCOS, MARIE G    |                  |
|  |             | ART UNIT             | PAPER NUMBER        |                  |
|  |             | 2163                 |                     |                  |

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                  |  |
|------------------------------|--------------------------------------|------------------|--|
| <b>Office Action Summary</b> | Application No.                      | Applicant(s)     |  |
|                              | 10/825,073                           | ASHMAN, JEFF     |  |
|                              | Examiner<br>Marie Antoinette Cabucos | Art Unit<br>2163 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 April 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 4/15/2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)                     | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Drawings*

Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-22 are directed towards method steps, which can be practiced mentally in conjunction with pen and paper, therefore, they are directed to non-statutory subject matter. Specifically, as claimed, it is uncertain what performs each of the method steps. The claimed steps do not define a machine or computer implemented process. (The examiner suggests applicant to change "method" to "computer implemented method" in the preamble to overcome the outstanding 35 U.S.C. 101 rejection). In addition, claims 1-22 are rejected under 35 U.S.C. 101

because the claimed invention is directed to non-statutory subject matter because they are lacking utilities. (I.e. the object oriented software application must be stored in a computer readable medium, and executed by a computer element to perform control of a technical procedure).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14, 7-19 and 22 are rejected under 35 U.S.C. 102(b) as being unpatentable by Malcolm Mosher, Jr. (US Patent no. 5,745,753).

Regarding claims 1, 7, 15, 18 and 22, Mosher discloses in figures 3 and 4 an application for verifying accuracy of a database file in a backup system by performing a transaction level audit, said method comprising the steps of: (1) transmitting a production journal receiver from a production system (200) to a backup system (220); (2) creating a backup database file (124) from the production journal receiver (200); (3) generating a backup journal (230) in the backup system from the backup database file (200); (4) generating a backup journal receiver (232) from the backup journal (230); and (5) comparing the backup journal receiver and the production journal receiver to thereby identify differences there between (col. 3, lines 7-15).

Regarding claim 2, Mosher discloses in figures 3 and 4 an application for verifying accuracy of a database file in a backup system by performing a transaction level audit, wherein the method further comprises the steps of: (1) generating a production journal (204) from a database file (108) on a production system; and (2) generating the production journal receiver (230) from the production journal.

Regarding claims 3, 16 and 17, Mosher discloses in figures 3 and 4 an application for verifying accuracy of a database file in a backup system by performing a transaction level audit, wherein the step of creating a backup database file from the production journal receiver further comprises the step of performing an apply process (232) on the production journal receiver that is received from the production system.

Regarding claims 4 and 19, Mosher discloses in figures 3 and 4 an application for verifying accuracy of a database file in a backup system by performing a transaction level audit, wherein the method further comprises the step of identifying errors in the backup database file at a transaction level from the comparison of the backup journal receiver and the production journal receiver (col. 22, lines 8-17).

Regarding claims 8-11, Mosher does not disclose a need to perform a cyclical redundancy check process on the production system, a data harvest on the production system, filtering of data from the resulting data harvest and running of a cyclical redundancy check process on the backup system.

Regarding claims 12-14, Mosher discloses in figures 3 and 4 an application for verifying accuracy of a database file in a backup system by performing a transaction level audit, wherein the method further comprises the step of transmitting data changes

in the production journal receiver to the backup system at an operating system level; wherein the step of transmitting data changes at the operating system level further comprises the step of transmitting data in machine code to thereby reduce latency between the production system and the backup system; and wherein the step of reducing latency further comprises the step of performing data transfer at a relatively high rate of speed even if the production system is processing a large number of transactions col. 1, lines 41-67 and col. 2, lines 1-21).

***Pertinent Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Prior art of record to Mutualik et al (US Patent no. 6,611,923) discloses a system and method for backing up data stored in multiple mirrors on a mass storage subsystem under control of a back up server.

Prior art of record to Bruce et al (US Patent no. 6,970,890) discloses a method and apparatus for data recovery.

Prior art of record to Ryuji Wakabatashi (US Publication no. 2002/0178174) discloses a backup system, backup method, database apparatus, and backup apparatus.

Prior art of record to Masaharu Tamatsu (US Publication no. 2003/0074600) discloses a data backup/recovery system.

Prior art of record to Steven L. Grobman (US Publication no. 2004/0260927) discloses a remote data storage validation.

Prior art of record to Ghotge et al (US Publication no. 2005/0228832) discloses a method and system for verifying integrity of storage.

*Inquiry*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marie Antoinette Cabucos whose telephone number is 571-272-8582. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don K. Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Marie Antoinette Cabucos

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Examiner  
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DON WONG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100